

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20546 of 2006

Date of Decision: 13.12.2007

Royal Trading Co., New Delhi.

..Petitioner.

Vs.

Union of India and Others

..Respondents.

CORAM : HON'BLE MR.JUSTICE M.M.KUMAR

HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

*** * ***

Present: Mr.Chetan Mittal, Advocate for the petitioner.

Mr.Sanjeev Kaushik, Advocate for the respondents.

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M.M.KUMAR, J.

The instant petition filed under Article 226 of the Constitution is directed against order dated 13.10.2006 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (Annexure P/1) partly declining the application made by the petitioner for waiving the condition of pre-deposit for hearing of appeal on merits. The Tribunal has required the petitioner to deposit a sum of Rs.5 lacs within the specified period failing which the appeal was to be regarded as dismissed. Then the matter came up for consideration before Division Bench of this Court on 22.12.2006 and interim direction was issued that the appeal of the petitioner may not be dismissed on account of non-deposit of the amount specified in the impugned order.

Mr.Chetan Mittal, learned counsel for the petitioner has cited before us order dated 6.6.2007 passed by the Tribunal in the case of **Expotec Indian Export Vs. CEC 2007 (216) ELT 593**. In the afore-

mentioned order, two members of the Tribunal had differed as to whether the item under consideration attracts the condition of pre deposit of 50% of the amount demanded or not. The matter was referred to 3rd member of the Tribunal, who has opined that in two cases, the Tribunal had already waived of the pre-deposit of penalty and duty on the ground that the procedure to be followed under HSN explanatory notes was not followed and opinion given by the IIT is in favour of the importer. The 3rd member has also expressed that it was a fit case for waiver of duty/penalty and accordingly the condition of pre-deposit of duty and penalty was waived for hearing the appeal.

Mr.Chetan Mittal, learned counsel for the petitioner has also pointed out that the impugned order passed in the case of the petitioner emerging from appeal No.C/558/96/13.10.2006, was also expressly referred to by the third member in **Expotec India Exports's case (supra)**.

Mr.Sanjeev Kaushik, learned counsel for the respondent could not rebut the factual position emerging from the order passed by the Tribunal in the case of **Expotec India Export (supra)**.

In view of the above, the impugned order cannot be sustained and the same is accordingly quashed. The application for waiving the pre-deposit amount is restored back on the file of the Tribunal to be considered afresh in view of its opinion expressed in **Expotec India Export (supra)**.

(M.M.Kumar)
Judge

(Rakesh Kumar Jain)
Judge

13.12.2007
Meenu

